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16 Attorneys for Defendants and Counterclaimants,  
 17 ENERGY LABS, INC.,  
 18 DMG CORPORATION, and  
 19 DMG NORTH, INC.

15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA

20 NORTEK AIR SOLUTIONS, LLC,  
 21 formerly known as CES GROUP, LLC

CASE NO. 5:14-cv-02919-BLF

22 Plaintiff and  
 23 Counterclaim-  
 24 Defendant,

**DEFENDANTS AND  
 COUNTERCLAIMANTS' NOTICE OF  
 MOTION TO MODIFY THE COURT'S  
 SCHEDULING ORDER AND EXTEND  
 THE DEADLINE TO COMPLETE  
 DISCOVERY**

25 vs.  
 26 ENERGY LABS INC., DMG  
 27 CORPORATION, and DMG NORTH, INC.

Date: December 3, 2015  
 Time: 9:00 am  
 Dept: Courtroom 3 - 5th Floor  
 Judge: Honorable Beth Labson Freeman

28 Defendants and  
 29 Counterclaim-  
 30 Plaintiffs.

Gordon & Rees LLP  
 275 Battery Street, Suite 2000  
 San Francisco, CA 94111

## **NOTICE OF MOTION**

2 PLEASE TAKE NOTICE that on Thursday, December 3, 2015, San Jose Courthouse,  
3 Courtroom 3 - 5th Floor, 280 South 1st Street, San Jose, CA 95113, before Judge Beth Labson  
4 Freeman, or as soon as the matter may be heard, in the above-captioned Court, Pursuant to Local  
5 Rules 16-2(d) and 6-3 and Rule 16(b)(4) of the Federal Rules of Civil Procedure, Defendants and  
6 Counterclaim-Plaintiffs ENERGY LABS, INC. (“Energy Labs”), DMG CORPORATION  
7 (“DMG Corp.”), and DMG NORTH, INC (“DMG North”) (collectively, “Defendants”) will and  
8 hereby do respectfully move this Court to modify the Scheduling Order and extend the discovery  
9 deadline for Defendants to obtain information withheld from evidence by Plaintiff and  
10 Counterclaim-Defendant, NORTEK AIR SOLUTIONS, LLC formerly known as CES Group,  
11 LLC’s (“Plaintiff”) and third-parties relating to air handling units with multiple fans. This  
12 modification of the scheduling order will impact all remaining dates on the Scheduling Order,  
13 including those dates relating to expert disclosures, motions for summary judgment, and trial.

14 Defendants' counsel met and conferred with Plaintiff's counsel regarding the filing of a  
15 motion for shortened time prior to the filing of this motion and Plaintiff's counsel would not  
16 agree to a shortened briefing schedule. This motion is based on the accompanying Memorandum  
17 of Points and Authorities, the accompanying Declaration of Reza Irani, the accompanying  
18 Declaration of Michael D. Kanach, and attached exhibits including discovery responses and  
19 objections and Declarations by Jon Hillegeist, Robert Brune, and Gary Johnson, the pleadings  
20 and records on file in this action, any other evidence or argument that may be presented before or  
21 at the hearing on this Motion, and all matters of which the Court may take judicial notice.

22 | Dated: November 18, 2015

GORDON & REES LLP

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By: /s/Robert P. Andris  
Robert P. Andris (SBN: 130290)  
Michael D. Kanach (SBN: 271215)  
Attorneys for Defendants  
and Counterclaimants,  
ENERGY LABS, INC.,  
DMG CORPORATION, and  
DMG NORTH, INC.

## **PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon & Rees LLP 275 Battery Street, Suite 2000, San Francisco, CA 94111. On November 18, 2015, I served the within documents:

**DEFENDANTS AND COUNTERCLAIMANTS' NOTICE OF MOTION TO  
MODIFY THE COURT'S SCHEDULING ORDER**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
  - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
  - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Francisco, addressed as set forth below.
  - by placing a true copy thereof enclosed in a sealed envelope, at a station designated for collection and processing of envelopes and packages for overnight delivery by FedEx as part of the ordinary business practices of Gordon & Rees LLP described below, addressed as follows:
  - by placing a true copy thereof enclosed in a sealed envelope, at a station designated for collection and processing of envelopes and packages for overnight delivery by DHL as part of the ordinary business practices of Gordon & Rees LLP described below, addressed as follows:
  - by Electronic Transmission based on a court order or an agreement of the parties to accept service by email or electronic transmission. I am readily familiar with Gordon & Rees LLP's practices for transmitting documents by electronic mail via internet service provider. I caused the documents to be sent to the persons at the email addresses listed for each addressee on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
  - by transmitting via ELECTRONIC FILING within the ECF System for the USDC – Northern District of California, the document(s) listed above on this date.

**Please see attached SERVICE LIST**

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 18, 2015, at San Francisco, California.

*/s/ Kibibi N. Shaw*

Kibibi N. Shaw

1                   SERVICE LIST  
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